

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM T. LIPSEY

Appeal No. 96-1389
Application No. 07/925,615¹

ON BRIEF

Before MEISTER, ABRAMS and STAAB, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 2, 4 to 6 and 8. Claims 10 and 11, the only other claims remaining in the application, have been

¹ Application for patent filed August 6, 1992.

Appeal No. 96-1389
Application No. 07/925,615

withdrawn from further consideration under 37 CFR § 1.142(b) as not being readable on the elected invention. An amendment filed subsequent to the final rejection on March 21, 1994 (Paper No. 9) has been entered. See the advisory letter mailed April 11, 1994 (Paper No. 11).

Appellant's invention pertains to a compost pile building apparatus. Details of the invention can be readily understood from a reading of the appealed claims, a copy of which is found in an appendix to appellant's brief.

The references of record relied upon by the examiner in support of the rejections are:

Piez et al. (Piez)	696,266	Mar. 25, 1902
Plugge et al. (Plugge) 1964	3,145,855	Aug. 25,
Pinckard 1979	4,164,405	Aug. 14,
Cottrell et al. (Cottrell) 1981	4,253,405	Mar. 3,
Shelef 1981	4,288,241	Sep. 8,
Malmström et al (Malmström) 1984	4,445,814	May 1,

The following rejections under 35 U.S.C. § 103 are before us for review:²

² The answer also included a new rejection of the appealed claims under 35 U.S.C. § 102(b) based upon a public use and/or

(1) claims 1 and 2, unpatentable over Pinckard in view of Shelef, Malmström, Plugge and Cottrell; and

(2) claims 4 to 6 and 8, unpatentable over Pinckard in view of Shelef, Malmström, Plugge and Cottrell, as applied in the rejection of claims 1 and 2, and further in view of Piez.

Turning to the standing § 103 rejection of claims 1 and 2, the examiner contends that Pinckard discloses that it is conventional in the art to compost cotton gin trash by moistening the trash with water while building a pile of the material to be composted. The examiner acknowledges that Pinckard does not disclose, inter alia, (1) a porous support surface for supporting the compost pile, (2) a support post extending upwardly from substantially the center of the support surface, (3) conveyor means for conveying cotton gin trash along a path above the support surface, (4) said conveyor having a plurality of outlets, (5) a cyclone attached to the support post for separating cotton gin trash from a

sale of the invention more than one year prior to the effective filing date of the application. This rejection was withdrawn in view of appellant's response thereto in the reply brief. See the supplemental examiner's answer mailed March 21, 1995 (Paper No. 20).

stream of air coming from a cotton gin and discharging the separated trash into the inlet of the conveyor means, and (6) fluid means for adding a fluid to the cotton gin trash as the cotton gin trash is received in the inlet of the conveyor means.

As to (1), the examiner cites Shelef as disclosing that it is conventional in the art to compost material in piles wherein the piled compost material is provided on a porous support surface. The examiner contends that it would have been obvious to one of ordinary skill in the art in view of Shelef to compost the material of Pinckard on a porous support surface "for the known and expected control of the composting pile which is provided by the porous support surface" (answer, page 4). Concerning (2) and (3), the examiner cites Malmström as teaching a screw auger device for piling material which includes a conveyor means 15 that is supported in a horizontal position above a surface by a support post. The examiner contends that it would have been obvious to employ a device as disclosed by Malmström "for the known and expected result of making piles of materials as required by the primary reference of Shelef [Pinckard?]" (answer, pages 4-5). Concerning (4),

Appeal No. 96-1389
Application No. 07/925,615

Plugge is relied upon by the examiner to teach a screw auger conveyor means which includes an auger tube having a plurality of spaced outlet openings 100 for evenly distributing material over the length of the conveyor means. Based on Plugge, the examiner contends that it would have been obvious to employ a conveyor device having a plurality of outlet openings in the modified primary reference "for the known and expected result of employing an alternative means recognized in the art to achieve the same result, the even distribution of material throughout and within a space of predetermined dimensions" (answer, page 6). With respect to (5), Cottrell is cited to teach that it is conventional in the art to convey cotton gin trash from a cotton gin by means of a forced air stream and then use cyclones to separate the trash from the forced air stream for further processing. Based on this teaching, the examiner contends that it would have been obvious to collect and convey cotton gin trash to the compost pile of the modified primary reference in the manner utilized by Cottrell. No reference is cited for (6). Instead, the examiner contends that it would have been obvious "to wet the solid material of the reference of Shelef [Pinckard?] with water which is

Appeal No. 96-1389
Application No. 07/925,615

introduced at and/or prior to the introduction of the material into the conveyor means for the known and expected result of providing the required mixing of the material prior to forming the pile" (answer, page 5). In this regard, the examiner contends that "spraying devices for adding a liquid to a solid are notoriously well known in the art" (answer, page 5).

We will not sustain this rejection.

Our court of review has repeatedly cautioned against employing hindsight by using the applicant's disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings of the prior art. *See, e.g., Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988). That court has also cautioned against focusing on the obviousness of the differences between the claimed invention and the prior art rather than on the obviousness of the claimed invention as a whole as § 103 requires. *See, e.g., Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1383, 231 USPQ 81, 93 (Fed. Cir. 1986), *cert. denied*, 480 USPQ 947 (1987).

Also appropriate is our reviewing court's words in *In re*

Appeal No. 96-1389
Application No. 07/925,615

Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), wherein the court stated:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention" (citations omitted).

We think that is precisely what has occurred here. There is simply no cogent reason for combining the reference teaching in the manner proposed by the examiner other than through the use of impermissible hindsight knowledge gleaned from first reading appellant's disclosure. Under such circumstances, the § 103 of claims 1 and 2 cannot be sustained.

The Piez reference applied in the rejection of claims 4 to 6 and 8 has been carefully considered but does not make up for the deficiencies of Pinckard, Shelef, Malmström, Plugge and Cottrell. Accordingly, the rejection of claims 4 to 6 and 8 also cannot be sustained.

In that a prima facie case of obviousness has not been

Appeal No. 96-1389
Application No. 07/925,615

made out by the examiner, it is unnecessary for us to consider appellant's evidence of nonobviousness, i.e., the affidavits of William T. Lipsey submitted March 21, 1994 and April 4, 1994.

The decision of the examiner is reversed.

REVERSED

JAMES M. MEISTER)	
Administrative Patent Judge)	
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)	
NEAL E. ABRAMS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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LAWRENCE J. STAAB)	
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Appeal No. 96-1389
Application No. 07/925,615

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